

Exhibit 29

Spitzer accuses firm of fraud;
Albany Lawsuit claims company hired by state to buy medications took tens of millions of dollars it didn't earn

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Body

The company that New York pays to negotiate prescription drug prices for more than a million public employees and retirees defrauded the state out of as much as \$100 million, according to a lawsuit filed Wednesday by Attorney General Eliot Spitzer.

St. Louis-based Express Scripts Inc. bilked the state's Empire Plan, by keeping rebates and exaggerating the costs of generic drugs, the suit alleges.

"They were simply committing fraud," Spitzer said. Between 1998 and 2003, Express Scripts pocketed "tens of millions," and the total could reach \$100 million, according to Spitzer.

"They violated their contractual obligation to give us the lowest price they can," said Spitzer.

The lawsuit, filed in state Supreme Court after negotiations with Express Scripts broke down, seeks reimbursement and civil penalties.

In a written statement, Express Scripts denied the charges in the lawsuit, claiming that its efforts saved the state \$2 billion in drug costs since 1998.

Express Scripts is one of the country's biggest pharmacy benefit managers. Governments and companies pay the company to lower their drug costs by negotiating cheaper bulk prices and rebates with drugmakers while maximizing the use of generics.

The state's original contract was with ValueRx Pharmacy Program Inc. Express Scripts took over that company in April 1998.

The state Department of Civil Service, which administers the Empire Plan, paid ValueRx and Express Scripts \$50.5 million in fees from 1998 to 2003, a period when the cost of drugs for the Empire Plan totaled \$3.5 billion.

According to the lawsuit, Express Scripts failed to use generics in many instances because that would have lowered its profits.

That hurt state workers and retirees, who typically pay a higher co-pay for a nongeneric drug.

"It's simply not possible to calculate" how much workers overpaid in co-pays since 1998, Spitzer said.

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The suit also says that Express Scripts pushed doctors to prescribe certain drugs even when less-expensive alternatives were available in order to maximize rebates from the makers of more-expensive drugs.

"There was the possibility of improper medications being prescribed because of these payments," Spitzer said.

Express Scripts' biggest scam, according to the lawsuit, was keeping a portion of rebates from drugmakers. Pharmaceutical companies pay rebates when a company like Express Scripts agrees to use their drugs.

Instead of giving the state 100 percent, as the contract required, Express Scripts "disguised portions of the manufacturer rebates" as fees, according to the suit.

As evidence, the suit quotes an internal ValueRx document stating that " 'management fees' were deemed to be 'the portion of the rebate that ValueRx keeps for itself. They can be called the Admin. Fees, Data Fees or Market Fees, but they are all the same.' "

"They were disguising the rebate in order to put the rebates in their own pocket," Spitzer said.

In another scheme, the suit alleges, Express Scripts manipulated its relationships with pharmacy chains, including CVS, to boost its profits and defraud the state.

The company had two types of drug pricing contracts with the state: a fixed one, under which the state paid the flat fee Express Scripts negotiated; and a variable one, which let Express Scripts keep savings if it obtained drugs at a lesser cost.

The suit alleges that the state was overcharged when Express Scripts rigged its fixed contracts with pharmacy chains at higher rates and its variable ones at lower costs, so that it kept additional profits.

The state also accuses the company of selling data it collected from the Empire Plan to drugmakers for use in marketing, a violation of the contract.

Spitzer said his office has been in settlement talks with Express Scripts for several weeks, but "we were far apart in our evaluation of the harm that was done to New York."

In its prepared statement, Express Scripts said it "will defend itself vigorously in court."

Despite the lawsuit, the company's contract with the state extends through 2005. When the old contract came up for renewal last year, Express Scripts was the sole bidder.

"The new contract has safeguards built into it," Spitzer said.

His office's yearlong investigation was prompted by a 2003 report from state Comptroller Alan Hevesi, whose audit first alleged that Express Scripts was failing to maximize the generics it listed.

That audit led to a lawsuit against Express Scripts by New York labor groups that represent more than 30,000 state employees. In December, the Organization of New York State Managerial Confidential Employees and the United University Professions filed a suit accusing the company of driving up health care costs to the state and its employees.

Charges of profiteering have plagued the pharmacy benefit sector. New Jersey-based Medco Health Solutions, which bid on the first New York contract, recently settled a multistate probe by agreeing to change certain business practices, while Caremark Rx. Inc. of Tennessee is under investigation in Florida for its business practices.

Since Express Scripts revealed the investigation in an earnings release last week, its stock fell 13 percent, to \$62.48 on the New York Stock Exchange.

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